for rulemaking concerning CMRS equal access.[53] The Commission is taking a measured approach and is ensuring that the fast-changing mobile services marketplace is not stymied by burdensome and unnecessary regulations while it conducts further proceedings. This is a rational way to regulate, and the Commission should continue.

C. The Commission Properly Applied The Section 332 Forbearance Test

NCRA incorrectly asserts that the Commission misapplied the three prong forbearance test set forth in Section 332 of the Communications Act. First, NCRA objects that the Commission stated in one instance that it was deciding whether to impose regulatory obligations rather than whether to forbear.[54] This is a matter of semantics.

In the context in which the Commission made its statement these obligations would be imposed for the first time. The Commission was discussing "private carriers who now will be regulated as CMRS providers."[55] In addition, many other mobile services are new (e.g., PCS) and others have not been tariffed (e.g., cellular). The obligations would not be a continuation of current practice for them either, but would be new. Moreover, the Commission made it clear dozens of times in the Order that it

---

[53] Id. at paras. 236-7. On June 9, 1994, in Docket No. 94-54, the Commission adopted a NPRM and NOI seeking comments on these issues.

[54] NCRA, pp. 13-14.

[55] Order, para. 17.

was considering the issue of forbearance. NCRA's objections to the Commission's wording and "mindset"[56] are frivolous.

Next, NCRA objects that the Commission stated that it "must weigh the potential burdens of those obligations against the need to protect consumers and to guard against unreasonably discriminatory rates and practices."[57] NCRA asserts that the three prongs of the forbearance test must be met independently, not as part of a balancing test. NCRA has no authority for that assertion. In any event, NCRA admits that in a public interest finding by the Commission "balancing of all relevant factors is permissible."[58] The third prong of the forbearance test is a finding that the public interest would be served. If under prongs one and two, the Commission finds that enforcement of the Title II provision is not necessary to ensure reasonable rates and practices or for the protection of consumers, the Commission still balances all relevant factors under prong three to determine the public interest. The need to protect consumers and to guard against unreasonably discriminatory rates and practices are relevant factors.

That NCRA's argument is once again frivolous is revealed by looking at how the Commission actually applied the three prongs of the forbearance test. It applied them independently, just as NCRA says that it should, while still

---

56 NCRA, p. 14.

57 Id.

58 Id. at 15, n. 25.

balancing all relevant factors for the public interest prong.[59] First, the Commission found that enforcement of Section 203 is not necessary to ensure against unreasonable rates and unreasonable discrimination.[60] Second, the Commission found that enforcement of Section 203 is not necessary to protect consumers.[61] Third, the Commission found that in light of having met prongs one and two, forbearing from applying Section 203 is consistent with the public interest for a number of reasons.[62]

Finally, NCRA objects "that the Commission justifies its forbearance of tariff regulation, in part, upon the Commission's desire to reduce its own regulatory burden."[63] NCRA states: "Consideration of such a factor is not only impermissible, but bad public policy."[64] NCRA cites no authority for this other than its own opinion set forth in its comments. NCRA's opinion is wrong. The Commission's statement in question ("Further, tariffs would add an unnecessary cost to the Commission's administration of the CMRS marketplace") was a relevant factor in the Commission's public interest determination of whether to allow CMRS tariffs. Moreover, this was merely one footnoted addition to numerous other public interest findings in

---

[59] NCRA acknowledges that there may be overlap among the considerations involved in the three prongs. Id. at 12.

[60] Order, para. 174.

[61] Id. at para. 176.

[62] Id. at para. 177.

[63] NCRA, p. 15.

[64] Id.

support of forbearance. Again, NCRA's objection is frivolous and should be rejected.

IV. THE COMMISSION PROPERLY RECOGNIZED DUAL JURISDICTION OVER CARRIER-TO-CARRIER FINANCIAL ARRANGEMENTS FOR THE TERMINATION OF MOBILE COMMUNICATIONS

McCaw asks the Commission to "clarify that the principle of mutual compensation, as an essential component of the 'reasonable interconnection' standard, is applicable to intrastate as well as interstate traffic."[65] Similarly, MCI asks the Commission to "clarify that it views mutual compensation as an 'essential component' of reasonably priced LEC interconnection arrangements."[66]

The Commission should deny these requests. It has clearly recognized its lack of authority over intrastate carrier-to-carrier financial arrangements for the termination of mobile services. Concerning the "principle of mutual compensation" the Commission stated in this proceeding: "This requirement is in keeping with actions we already have taken with regard to Part 22 providers."[67] The Commission cited the Interconnection Order, 2 FCC Rcd at 2915. There the Commission applied a mutual compensation requirement to financial arrangements for interstate switching, but recognized that its decision in the Indianapolis Telephone Company complaint case governed its policy on intrastate financial arrangements. In

---

[65] McCaw, p. 5.

[66] MCI, p. 14.

[67] Order, para. 232.

that complaint case, the Commission upheld the Common Carrier Bureau's decision that "reasonable interconnection" does not require a particular type of financial arrangement and that the Commission does not have jurisdiction over financial arrangements concerning intrastate communications.[68]

Thus, the Commission has properly recognized state authority over intrastate financial arrangements, including whether to apply mutual compensation or other types of arrangements. Accordingly, the Commission should deny the requests of McCaw and MCI.

V. CONCLUSION

For all the above reasons, the Commission should deny the petitions for reconsideration or clarification of AMTA, MCI,

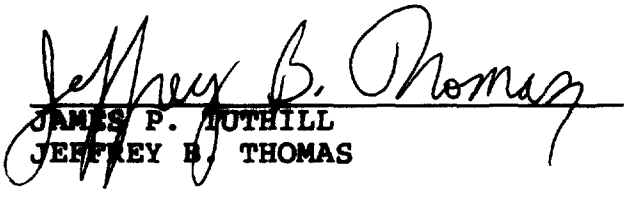
---

[68] Indianapolis Telephone Company v. Indiana Bell Telephone Company, 2 FCC Rcd 2893, 2894, paras. 5-7 (1987), upholding Memorandum Opinion and Order, DA 86-61, released October 16, 1986, paras. 9-10. The Commission confirmed these findings in the Cellular Interconnection proceeding, 4 FCC Rcd 2369, 2372, paras. 20-29 (1989).

and NCRA, as well as the portion of McCaw's petition concerning intrastate mutual compensation requirements.

Respectfully submitted,

PACIFIC BELL
NEVADA BELL



JAMES P. TOTHILL
JEFFREY B. THOMAS

140 New Montgomery St., Rm. 1522-A
San Francisco, California 94105
(415) 542-7661

JAMES L. WURTZ

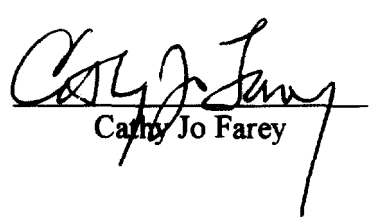
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 383-6472

Their Attorneys

Date: June 16, 1994

CERTIFICATE OF SERVICE

I, Cathy Jo Farey, hereby certify that a copy of the foregoing Opposition by Pacific Bell and Nevada Bell to Petitions for Reconsideration was mailed, postage prepaid, this 16th day of June, 1994, to the parties on the attached service list.



Cathy Jo Farey

SERVICE LIST
GN DKT NO. 93-252
JUNE 16, 1994

Larry Blosser
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Mark J. Golden
Personal Communications Industry Association
1019 19th Street, N.W.
Suite 1100
Washington, D.C. 20036

Martin W. Bercovici
Keller and Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

Joel H. Levy
Cohn and Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036

Scott K. Morris
McCaw Cellular Communications, Inc.
5400 Carillon Point
Kirkland, Washington 98033

Gregg P. Skall
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20554

Frank Michael Panek
Ameritech
2000 West Ameritech Center Dr.
Hoffman Estates, Illinois 60196

Maureen A. Scott
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Paul Rodgers
National Association of Regulatory Utility Commissioners
1102 ICC Building
Post Office Box 684
Washington, D.C. 20044

Kathleen H. Burgess
NYS Department of Public Service
Three Empire State Plaza
Albany, New York 12223

David B. Jeppsen
Keck, Mahin & Cate
1201 New York Avenue
Washington, D.C. 20005

Phillip L. Spector
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, N.W.
Suite 1300
Washington, D.C. 20036

Alan R. Shark
American Mobile Telecommunications Association, Inc.
1150 18th Street, N.W., Ste. 250
Washington, D.C. 20036

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036